IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5760 of 2007()

CRIME NO.251/07 OF KUTHIATHODE POLICE STATION

: PETITIONER/1ST ACCUSED:

SANTHOSH, S/O. ISSAC,
NIKARTHIL, WARD NO.14, KODAMTHURUTH PANCHAYATH,
CHERTHALA TALUK.

BY ADV. SRI.C.K.SAJEEV

RESPONDENTS: DE-FACTO COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007 ALONG WITH B.A.NOS.5761 & 5765 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.5760, 5761 & 5765 of 2007

Dated this the 25th day of September, 2007

ORDER

These petitions are for anticipatory bail. The petitioner in B.A.Nos.5760 & 5761 of 2007 seek anticipatory bail in two different crimes - one registered at the local police station, inter alia, under Section 332 I.P.C and the other registered by the excise officials. The petitioners in B.A.No.5765 of 2007 who are the wife and sister of the 1st accused pray for anticipatory bail in Crime No.251 of 2007 of Kuthiyathodu Police Station under Section 332 I.P.C.

2. The excise officials alleged that when they reached the house of the 1st accused, he was found engaged in the activity of illicit sale of liquor. 600 ml of coloured liquor (arrack) was allegedly seized from the possession of the petitioner. The allegations are raised against the petitioner under Section 55 (i) of the Kerala Abkari Act.

3. It is the further case of the excise officials that the petitioner resisted his arrest and along with accused 2 and 3 attacked the excise officials resulting in injury to 2 of the excise officials. Investigation is in progress in both these crimes. The petitioners apprehend imminent arrest.

4. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The allegations under the Kerala Abkari Act are not sustainable. The 1st accused along with a friend of his was consuming licit Indian Made Foreign Liquor. The excise officilas had come to the fence and were peeping in. Not knowing that they were excise officials, the 1st accused had taken objections to their peeping into the house. This had infuriated the excise officials who insisted that the 1st accused must show them documents to show the licit purchase of the Indian Made Foreign Liquor. The 1st accused was not amenable to do so. Consequently there was an altercation. The 1st accused and his friend had left the scene after such altercation. Totally false and vexatious allegations are being raised consequently. The petitioners may be granted anticipatory bail, it is prayed.

5. The learned Public Prosecutor opposes the applications. The learned Public Prosecutor submits that the allegations against the petitioners are found to be acceptable. Satisfactory indications are collected in the course of investigation. In these circumstances, there are absolutely no circumstanceS justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

6. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I find absolutely no reason at the moment to assume that the allegations raised by the

excise officials of alleged sale of illicit liquor by the 1st accused is false or cannot be accepted. Similarly, I take note of the undisputed circumstance that two excise officials had suffered injuries. Admittedly there was an incident involving the petitioners and the excise officials also. I am, in these circumstances, satisfied that this is a fit case where the petitioners must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

7. These applications are, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

8. The petitioners in B.A.No.5765 of 2007 are women, being the wife and sister of the 1st accused. Needless to say, they shall be entitled to request the learned Magistrate to invoke the compassion under Section 437 Cr.P.C in their favour. Appropriate orders shall be passed by the learned Magistrate on merits.

(R.BASANT, JUDGE)

rtr/-